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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

DANIEL F. BLOCH

PETITIONER

v.

LODGE COMPTON,
RACHEL RIGGSBY
&
MOUNTAINEER PUBLISHING CO., INC.,

RESPONDENTS

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Petitioner herein seeks review of a judgment rendered in the Circuit Court of Dickenson County, Virginia, setting aside a jury verdict in petitioner's favor and entering judgment in favor of the respondents (defendants below) dismissing the case. The action arises out of the publication in the *Virginia Mountaineer*, a small, local, weekly newspaper printed in Grundy in neighboring Buchanan County, Virginia, of an article summarizing developments in a judicial proceeding involving the petitioner. Based on that article, petitioner sought damages in the amount of one million dollars, alleging "false, malicious, slanderous, libelous and insulting statements, published with actual malice".

On January 26, 1974, petitioner abducted two young boys, Johnny Lee Dotson and Robert Watts, who were students at the Mountain Mission School, an orphanage in Grundy, and flew them in his private airplane to Florida, where he had previously resided. Petitioner obtained a Court Order there granting him custody of those two boys, and then returned with the boys to his home in Ohio where he was arrested on February 1, 1974, on charges of abduction brought by the school officials. Petitioner now claims that he removed the boys from the school to protect them from child abuse. The school officials contend, on the other hand, that his motives were otherwise, based upon reports from the two boys that Bloch had taken indecent liberties with them. On May 27, 1975, following a lengthy conference with his attorneys, Bloch pleaded guilty in the Circuit Court of Buchanan County to abducting both boys; and, on September 25, 1975, he was sentenced by Judge Nicholas E. Persin to 10 years in the state penitentiary, execution of which was suspended upon condition that petitioner serve six months in the county jail and comply with various other terms and conditions.

On October 8, 1979, petitioner filed a motion for post-conviction relief in the Buchanan County Circuit Court,

seeking an order vacating his conviction on the grounds that (a) newly discovered evidence disclosed that two witnesses had perjured themselves, (b) petitioner's guilty plea had been coerced by his attorneys, Edward Sawyer of Florida and Birg Sergeant of Virginia, and (c) he had received ineffective assistance of counsel. Thereafter, on February 21 and 22, 1982, petitioner offered evidence from his witnesses in support of his application. On March 28, 1980, a third hearing was conducted, during which the Commonwealth presented its evidence. Petitioner's motion was eventually denied by Judge Persin on September 5, 1980; and his petition for appeal from that decision was refused by order of the Supreme Court of Virginia dated May 29, 1981. The instant libel suit arises out of an article published on April 3, 1980, reporting developments in the prosecution's hearing on March 28th.

Petitioner, appearing pro se, pleaded below that the article omitted the testimony of certain witnesses favorable to his position and thus it was slanted and biased in such a way as to mislead the average reader, thereby rendering the article false. Secondly, petitioner claimed that he was defamed by a headline composed by respondent Lodge Compton summarizing what Mr. Compton believed to be the major development during the hearing in question: namely the previously undisclosed reason why Bloch's attorneys had advised him to plead guilty in 1975 (i.e., the anticipated "devastating" effect of statements by the boys that they had been "touched" by Bloch during the abduction). The headline, it is said, imputes to petitioner's attorney personal knowledge that the boys had been touched, whereas he was in truth only restating what the children had told him. Finally, Bloch alleged that the statement in the article that his attorney's advice was based on an "interview" of the boys (as opposed to a brief conversation) was also false.

Thereafter, on motion of petitioner, Judge Persin (who had presided at his criminal proceedings) excused himself and the case was transferred to Judge Glynn Phillips, who

in turn, again on motion by the petitioner, changed venue to Dickenson County Circuit Court to assure the availabilty of jurors who would not be prejudiced in any way by pretrial publicity.

Meanwhile, in addition to this action, petitioner commenced a number of other lawsuits in Virginia, Ohio, and elsewhere, seeking relief in his own right and on behalf of others against Mountain Mission School and a wide variety of other individuals. For example, he filed suit in the United States District Court for the Western District of Virginia, on June 11, 1979, along with Johnny Dotson, seeking to vacate his abduction conviction and in addition alleging damages in the amount of one hundred million dollars for harm to health and reputation against some forty-three defendants including, (a) the Mountain Mission School, its officers and directors, four teachers, and a physician, (b) Judge Persin, (c) the Commonwealth Attorney and Special Prosecutor who handled the abduction indictments; (d) the Attorney General of Virginia, the Attorney General of the United States, and the Director of the Federal Bureau of Investigation; (e) petitioner's two attorneys who represented him at the time he pleaded guilty; (f) various members of the probation and welfare departments of Ohio, Florida, and Pennsylvania; and (g) miscellaneous others.

Furthermore, the petitioner has also applied to the Governor of the Commonwealth of Virginia, John B. Dalton, for a pardon; and he has approached various state and federal authorities, requesting investigation and prosecution of Mountain Mission School and others alleged to have conspired against him, all without success. In fact, just prior to trial below, Judge Phillips denied an application by Bloch to convene a special grand jury. Trial herein then commenced on June 3, 1981, resulting in the jury verdict which the trial court promptly set aside on the ground, inter alia, that absolutely no proof had been offered to show that respondents knew that the publication was false or entertained any doubt as to its truth.

ARGUMENT

POINT 1

The state courts below did not decide any question of law which has not been settled by this Court.

Petitioner contends - as he must (see Rule 17, U.S. Sup. Ct. Rules) - that the trial court below, in setting aside the jury verdict herein, decided an important question of federal law which has not been, but should be, settled by this Court. On the contrary, however, the decision now under review (quoted in the Appendix to the petition at bar) clearly demonstrates that Judge Phillips applied the principles of libel law set forth in *New York Times v. Sullivan*, 376 U.S. 254, 11 L.Ed. 2nd 686, 84 S. Ct. 710, 95 A.L.R.2d 1412 (1963) and its progeny: namely that a public figure* may recover under these circumstances only upon

> ". . . a showing that a false publication was made with a 'high degree of awareness of . . . probable falsity . . . . These cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Time, Inc.* v. *Pape*, 401 U.S. 279, 291-92, 28 L.Ed.2d 45, 54, 91 S. Ct. 633 (1971).

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*Petitioner suggests (petition, question for review 1a, p. 1) that his status as a public figure resulted from fraudulent publicity. Respondents, on the other hand, contend that he thrust himself to the forefront of a public controversy which he himself created by abducting the boys and then sustained by his efforts (for whatever purpose) to "blow the whistle" on child abuse. In any event, he made no objection to the careful jury instructions, applicable to a public figure, which required clear and convincing proof of knowledge of falsity or reckless disregard for the truth. See e.g., Instruction No. 4, Appendix hereto.

In that case, plaintiff Pape argued that the omission of important facts by the publisher constituted malicious falsehood, just as petitioner herein relies upon his theory of omission by "malicious censorship." This Court deliberated the very point which petitioner argues has not been considered, and held as follows:

> "In light of the totality of what was said in Justice (the report relied upon by the publisher therein), we cannot agree that when Time failed to state that the Commission in reporting the Monroe incident had technically confined itself to the allegations of a complaint, Time engaged in a 'falsification' sufficient in itself to sustain a jury finding of 'actual malice'." *Id.*, 401 U.S. at 289, 28 L.Ed.2d at 53.

> "Time's omission of the word 'alleged' amounted to the adoption of one of a number of possible rational interpretations of a document that bristled with ambiguities. The deliberate choice of such an interpretation, though arguably reflecting a misconception, was not enough to create a jury issue of 'malice' under New York Times." *Id.*, 401 U.S. at 290, 28 L.Ed.2d at 53.

The Court went on to hold that knowing alteration of the wording in the report relied upon, and intentionally restating as facts what were only allegations in the source, did not create a jury issue as to malice. Precisely the same conclusion was reached by the trial court below under the evidence in this case - "There is no evidence of malice in this case" (Appendix to petition at p. 11) - applying and quoting the very principles which Petitioner argues have not been decided by this Court. Making an independent examination of the whole record, Judge Phillips in effect held that the evidence in the record could not constitutionally support a judgment for petitioner, *Time, Inc.* v. *Pape*, *supra*, 401 U.S. at 284, 28 L.Ed.2d at 50.

POINT 2

The issue of conspiracy was not raised at trial

Petitioner's Motion for Judgment (Virginia's equivalent to a "complaint" in federal practice) alleges that "the published material (involved herein) was malicious and per se slanderous and libelous." (See par. 7 of Appendix annexed hereto.) In addition to this pleading, the record below contains answers by petitioner to extensive interrogatories, transcripts of two depositions by petitioner, and many affidavits sworn to by him in support of various applications. Nowhere in any of those voluminous papers does the word "conspiracy" appear. On the contrary, petitioner himself admitted that this lawsuit was based solely on the theory of libel. At his oral examination upon deposition conducted January 22, 1981, petitioner testified as follows:

> "Q. What is the basis of your lawsuit here, the entire basis of your law suit?"
> "A. Well, I have alleged injuries to my mental well-being and etc. as a result of the libelous statements made against me and the injuries, the psychological injuries which I suffered as a result."
> "Q. Of the libelous statement?"
> "A. Yes".

On June 2, 1981, the day before trial, petitioner sought for the first time to amend his pleadings to assert a second cause of action pleading conspiracy. When the court indicated that the amendment would be conditioned upon a continuance to permit discovery into that issue, petitioner withdrew his motion; and the case went to trial solely on the issue of defamation. No jury instructions dealing with conspiracy were requested, and none were given.

As a result that theory was not properly before the jury for decision, and may not be raised now in this Court.

> "There can be no judgment or decree without pleadings and points not raised in the pleadings cannot be considered by the court . . . . Likewise, evidence without proper pleading will not support a verdict." 14 Michie's Jurisprudence, Pleadings, Sec. 3 at 442 (1951).
>
> "The plaintiff will be limited to the issues presented by the pleadings. The defendant must put in or file his plea, and the record must show this fact and the character of the plea on which the issue is joined. Otherwise, the verdict should be set aside." *Id.*, Sec. 4 at 443.

POINT 3

Petitioner has not suffered compensable damages

The motivation underlying this lawsuit is best illustrated by the Motion for Judgment which pleads that the respondents' alleged practice of "highly biased and unfair reporting" (par. 4, Appendix), by which they are said to have "tried to cover up facts favorable to the Plaintiff (petitioner)" *(Ibid)*, "have made it impossible for the Plaintiff to obtain an impartial, fair jury panel" *(Id.*, par. 5). He charges that the news article herein was " . . .willfully designed by the Defendants to discredit the Plaintiff in his profession and in his legal pleadings for redress of grievances before a jury" *(Id.*, par. 7), thereby denying him ". . . the right to have his sentence vacated and obtain other relief" *(Id.* par. 6). The record shows, however, that Bloch never went before a jury concerning his sentence and his conviction became final, if not many years ago, then certainly on May 29, 1981, when the Virginia Supreme Court affirmed the denial of

his application for post-conviction relief. There surely can be no suggestion that the Dickenson County jury which rendered the verdict below was tainted by any conduct on the part of these respondents. That aspect of petitioner's claim is totally spurious.

Petitioner's claim of pecuniary harm is equally unsupportable. He pleaded no pecuniary damages; and although he argued in an emotional summation that he had lost, among other things, his mother, nevertheless he offered absolutely no evidence of special damages, pecuniary or otherwise. That failure of proof is fatal to his case. *Fleming* v. *Moore*, 221 Va. 884, 275 S.E.2d 632 (1981); *Shupe* v. *Rose's Stores*, 213 Va. 374, 192 S.E.2d 766 (1972); *Weaver* v. *Beneficial Finance Co., Inc.*, 200 Va. 572, 106 S.E.2d 620 (1959). As a former resident of Florida who resided in Ohio at the time he abducted the boys, and as a resident of Florida again at the time he commenced the instant lawsuit, who has never been domiciled anywhere in Virginia, he cannot seriously contend that he suffered any compensable harm from this purely local newspaper publication.

This petitioner (the convicted abductor of two young boys) presented himself before the jury as a "whistleblower" seeking to expose child abuse at Mountain Mission School, and was permitted over repeated objections* to introduce substantial, highly inflammatory evidence of neglect and mistreatment, all of which was vehemently denied by the school. Asserting his rights under the First Amendment of the United States Constitution, petitioner now urges this Court to reinstate the verdict against these respondents who were themselves exercising their First Amendment freedoms. That

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*Respondents moved *in limine* to suppress such testimony and objected to it thereafter as irrelevant and inflammatory; and counsel for Mountain Mission School appeared specially and moved for similar relief on the ground that the school was not a party and was not present to defend itself.

verdict was squarely and irreconcilably contrary to the trial court's unchallenged instructions and was plainly the product of passion and sympathy. The trial court's judgment setting that verdict aside was proper; and your respondents respectfully request that the judgments below, in the trial and appellate courts, both on original applications and upon motions for reconsideration, not be disturbed.

Respectfully submitted,

Mountaineer Publishing Co., Inc.
Lodge Compton
Rachel Riggsby
Respondents

By Counsel

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APPENDIX

IN THE CIRCUIT COURT FOR BUCHANAN COUNTY, VIRGINIA

DANIEL F. BLOCH,

Plaintiff

CASE NO.

v

MOUNTAINEER PUBLISHING CO., INC.,
LODGE COMPTON, Editor-Publisher,
RACHEL RIGGSBY, News-Editor

Defendants

MOTION FOR JUDGEMENT

COMES NOW the Plaintiff, Daniel F. Bloch, and moves for judgement against the above-named Defendants on grounds and in the amount hereinafter set forth:

1. Plaintiff is an upstanding and honest citizen of Sarasota, Florida who has for many years enjoyed a good reputation among members of his community.

2. Defendants are a Corporation, its Editor-Publisher and its News-Editor. The Corporation was organized and is doing business under the laws of the State of Virginia having offices at 105 Main Street, Grundy, Virginia, and is the publisher and owner of a certain weekly newspaper known as "The Virginia Mountaineer," which newspaper is circulated by the Defendant Corporation generally and extensively throughout the City of Grundy and the State of Virginia. The Editor-Publisher and the News-Editor are individuals residing in or near the City of Grundy, Virginia. All Defendants have their principal business office or residence in Buchanan County, Virginia.

3. On April 3, 1980 the Defendants did, with actual malice, compose, publish and circulate in said newspaper an article containing certain false, scandalous and defamatory matter of and concerning the Plaintiff, as follows:

a. A headline stating "Attorney Testifies Children Touched" is untrue.

b. The statement that the Plaintiff's attorneys "interviewed" two boys is misleading and therefore false as to its intent and meaning.

c. The word "allegedly" is glaringly missing in most of the article, and its omission is deliberately calculated to mislead the readers of the newspaper into drawing a false conclusion.

d. The admission by both William Drake and Charles Sublett, that Charles Sublett refused to heed a Court Order allowing the Plaintiff to interview Johnny Dotson was deliberately omitted, as was Charles Sublett's claim of a superseding Court Order.

e. The claim by Charles Sublett and James Swiney that they did not talk to Johnny Dotson *at all* about the case for more than a year and a half prior to the 1975 trial of the Plaintiff was omitted.

f. The fact that Charles Sublett impeached his son-in-law, James M. Swiney, in his sworn testimony about where Johnny Dotson was required to live prior to the 1975 trial of the Plaintiff for allegedly "abducting" Johnny Dotson was omitted.

g. The fact that Charles Sublett, by his own sworn testimony, impeached his daughter, Mrs. James Swiney, about the allegedly "ordinary way" Johnny Dotson was treated at the Mountain Mission School was omitted.

h. The fact that Mrs. James Swiney admitted, under oath, that she beat Johnny Dotson with a leather belt was omitted.

i. The alleged excuse of Mrs. James Swiney for beating Johnny Dotson was omitted.

j. The credibility of Johnny Dotson, a witness for the

Plaintiff, was therefore omitted, as was his understandable explanation of why, as a mere twelve year old child, he was terrorized into lying; and that he knew that beatings with belts were part of the practices of the Mountain Mission School staff.

1. The highly biased slant of the entire front page article revolved around alleged "touching," and the refusal to print damaging testimony by the Mountain Mission School officials themselves about each other constitutes a serious breach of the true facts that was calculated to mislead the readers of the newspaper.

4. The Defendants sometimes practice a highly biased and unfair reporting of the news calculated to mislead the newspapers' readers. The Defendants have distorted the news they did print in order to favor local citizens of prominence; they have omitted other news damaging to local citizens of prominence; and they have knowingly and deliberately censored, by refusing to print, news of lawsuits filed against the Mountain Mission School and other local officials which other newspapers published. The Defendants, by the omissions and distortions, have tried to cover up facts favorable to the Plaintiff and therefore have damaged him.

5. The Defendants, by these practices, have made it impossible for the Plaintiff to obtain an impartial, fair jury panel to hear his case in southwest Virginia.

6. The clear implication of the above-quoted material is that the Plaintiff was guilty of improper conduct and that he ought to be denied the right to have his sentence vacated and obtain other relief.

7. The above-quoted material was published by the Defendants with actual malice, that is, with full knowledge that it was false or with reckless disregard of whether or not it was false. It was willfully designed by the Defendants to discredit the Plaintiff in his profession and in his legal pleadings for redress of grievances before a jury. As such the published material was malicious and per se slanderous and libelous. Statements such as these contained

in the above-quoted material are, from their usual construction and common usage, construed as insults and tend toward violence and breach of the peace.

8. As a proximate result of the forementioned false, malicious, slanderous, libelous and insulting statements, published with actual malice by the Defendants, the Plaintiff has been caused to suffer great mortification, humiliation, shame, vilification, exposure to public infamy, scandal and disgrace, injury to his good reputation, harm in the conduct of his business affairs, and financial loss, and has been and will forever be hampered in his business, all in that plaintiff has been falsely imputed to have conducted himself in the manner set forth in the Defendants' newspaper article. Much of this injury will endure permanently.

WHEREFORE, Plaintiff Daniel F. Bloch demands Judgement against Defendant MOUNTAINEER PUBLISHING CO., INC., Defendant LODGE COMPTON, and Defendant RACHEL RIGGSBY in the amount of One Million Dollars ($1,000,000.00) representing Five Hundred Thousand Dollars ($500,000.00) compensatory damages and Five Hundred Thousand Dollars($500,000.00) punitive damages, and his costs in this behalf expended.

Respectfully submitted,

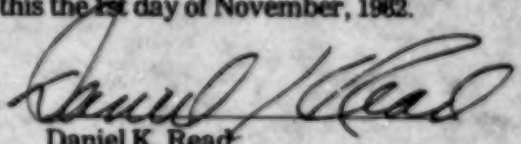
Daniel F. Bloch, Pro Se
201 Pearl Avenue
Sarasota, Florida 33580
Tel. 813-355-1048

INSTRUCTION NO. 4

Because of the constitutional protection afforded to newspapers in reporting to the public about matters of general interest or concern, the law imposes upon the plaintiff in this case the burden to establish, by clear and convincing proof, that the statements about which plaintiff complains in this action were indeed substantially and materially false, and further, that the defendant newspaper, at the time of publication, had actual knowledge that the statements were false, or that the newspaper either entertained serious doubts as to the truth of the statements or possessed a high degree of awareness of their probable falsity.

CERTIFICATE OF SERVICE

I certify that three copies of the foregoing Brief in Opposition were mailed to Petitioner herein, by counsel, Larry H. Spalding, Esq., Lewis & Spalding, 6624 Gateway Avenue, Sarasota, Fla. 33581, on this the 1st day of November, 1982.



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